



The Telecommunications Association

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Direct Dial

June 25, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

EX PARTE

Re: CC Docket No. 93-144

Dear Mr. Caton:

Pursuant to Section 1.1206(a)(2) of the Commission's Rules, this is to notify you that Jeffrey Sheldon and Sean Stokes, representing UTC, met today with David Furth, David Kirschner and Maureen McLaughlin of the Commission's Wireless Telecommunications Bureau to discuss the FCC's reallocation of the "General Category Channels in the 800 MHz band, in PR Docket No. 93-144.

The substance of UTC's presentation concerned points raised in its "petition for reconsideration" in this docket with regard to Commission's decision to reallocate the 800 MHz General Category channels to the exclusive-use of commercial systems. The attached paper outlines the focus of UTC's presentation. The original and one copy of this notice are being filed for inclusion in this docket.

Should any questions arise concerning this notification, please communicate with the undersigned.

Cordially yours,

A handwritten signature in black ink, appearing to read 'Sean A. Stokes'.

Sean A. Stokes
Senior Staff Attorney

cc: David Furth
David Kirschner
Maureen McLaughlin
Public Inspection File

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Ex Parte

**The FCC Should Reconsider Its Decision To Reallocate
The General Category Channels, PR Docket No. 93-144**

- Before the FCC's actions in this docket, private land mobile system licensees had access to 600 channels in the 800 MHz band; today, these entities have access to a total of 170 channels, and with restrictions on intercategory sharing, even fewer channels are available to any given applicant, depending on specific radio service eligibility.
- Utilities and pipelines rely on private land mobile radio systems in the 800 MHz band to support critical public safety/public service functions. Utilities and pipelines request licensing in the Industrial/Land Transportation (I/LT) category at 800 MHz. However, I/LT channels are exhausted in many areas of the country. As a result many of these private system users have been forced to rely on the General Category channels in implementing their essential systems.
- The Commission's decision to reallocate the General Category channels to SMR-only use is not supported by the underlying record in this proceeding. In the *Further Notice of Proposed Rulemaking (FNPRM)* in which the FCC first raised the issue of a possible realignment of the General category channels, the Commission strongly suggested that it was inclined to restrict future SMR access to all or some of the General Category channels. The FCC stated:

Although we believe that SMR licensees with existing operations on the General Category or Pool Channels should be allowed to continue their operations on such channels, we also believe that some restriction on future SMR applications on General Category and Pool Channels may be appropriate.¹

- The *First R&O* does not provide a detailed or reasoned basis to justify the FCC's reallocation of the General Category channels to commercial services. The FCC relies on a count of license records to support its conclusion that "the demand for additional spectrum by SMR providers is significantly greater than the demand by non-SMRs."² Yet in the *FNPRM* the FCC characterized private land mobile usage of these channels as "extensive."³

¹ *FNPRM*, PR Docket No. 93-144, 10 FCC Rcd 7970, 7999.

² *First R&O and Eighth R&O*, para.137.

³ *FNPRM*, para. 52.

- Comparing the number of commercial and non-commercial license grants in the General Category does not accurately depict demand but instead reflects the different licensing policies that the FCC has adopted for commercial systems compared to private systems.
- Under the liberal licensing policies that the FCC has had in place for commercial mobile radio operators, SMRs could request as many channels as they wanted on a speculative basis without regard to a demonstration of actual need. In contrast, private internal users such as utilities are required by FCC rules to justify the number of channels requested on the basis of near-term loading requirements. Given these two widely differing licensing policies it is axiomatic that FCC licensing records will indicate that SMRs are licensed on more channels than private non-commercial users, but these records do not indicate actual demand or system usage, nor do license counts necessarily reflect the public interest in allocating additional spectrum for commercial use at the expense of public safety/public service.
- Contrary to the FCC's findings, UTC's count of licensed base stations would indicate that non-SMR usage of the General Category channels is in fact greater than SMR usage.
- Given the importance of the continued availability of these channels to the underlying mission of the nation's public service/public safety entities, it is wholly inappropriate to rely on a count of license records that are skewed by unbuilt, speculative SMR applications. Instead, the FCC should at least conduct an audit of the major urban areas to assess the nature of actual General Category usage. UTC strongly believes that such an investigation would reveal a much higher percentage of non-SMR usage of the General Category channels.